

## § 401.75

to represent adequately the strength and volume of waste that is discharged; and

(8) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

[62 FR 64158, Dec. 4, 1997, as amended at 63 FR 45943, Aug. 28, 1998]

### § 401.75 Protection of trade secrets; Confidential information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by this part shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791.

### § 401.76 Failure to furnish report.

The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

### § 401.77 Informal conference.

Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may des-

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ignate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

### § 401.78 Consolidation of hearings.

Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

## Subpart F—Administrative and Other Hearings

SOURCE: 62 FR 64159, Dec. 4, 1997, unless otherwise noted.

### § 401.81 Hearings generally.

(a) *Scope of subpart.* This subpart shall apply to contested cases required to be held under subparts C and E of this part, to the conduct of other administrative hearings involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this subpart.

(b) *Definition of contested case.* "Contested case" means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted rule or regulation of the Commission.

(c) *Requests for hearings.* Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this subpart provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or

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decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this subpart, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

(d) *Optional joint hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this subpart may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(e) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a "hearing docket" which shall be posted in public view at the office of the Commission.

(f) *Notice of hearing.* Notice of any hearing to be conducted pursuant to this subpart shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

### § 401.82 Authorization to conduct hearings.

(a) *Written requests for hearings.* Upon receipt of a written request for a hearing pursuant to this subpart, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a hearing pursuant to this subpart if it determines that an adequate record with regard to the action or decision is not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commission or that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

(b) *Commission directed hearings.* This subpart shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions, of this subpart.

### § 401.83 Hearing Officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the Chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;